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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 TOLL BROTHERS, INC.,
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13 Plaintiff,

14 vs.

15 CHANG SU-O LIN, HONG LIEN LIN
16 AND HONG YAO LIN,
17 Defendants.

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28
AND RELATED CROSS-ACTION.

No. C08 00987 SC

**ASSIGNED FOR ALL PURPOSES TO:
HONORABLE SAMUEL CONTI
COURTROOM 1**

**~~PROPOSED~~ ORDER GRANTING
DEFENDANTS' NOTICE OF MOTION
AND MOTION TO DISMISS THEIR
FOURTH, FIFTH AND SIXTH
COUNTERCLAIMS WITHOUT
PREJUDICE [FED. R. CIV. PRO. RULE 41]**

Date: March 23, 2009

Time: 9:30 a.m.

Ctrm: 1

Judge: Honorable Samuel Conti

Action Filed: 2-19-08

The Defendants' Motion to Dismiss Certain Counterclaims came on regularly for hearing before this Court on March 23, 2009 at 9:30 a.m., in Courtroom 1. The parties were presented by counsel at the hearing.

Having considered the arguments of counsel, and good cause appearing, Defendants' motion to dismiss without prejudice their fourth cause of action for breach of section 18.7 of the

1 Agreement, fifth cause of action for intentional misrepresentation, and sixth cause of action for
2 negligent misrepresentation is GRANTED. The Lins further retain their affirmative defenses
3 and right to assert an indemnity claim when and if such claim ripens. *See Preferred Risk Mut.*
4 *Ins. Co. v. Reiswig* 21 Cal.4th 208, 213 (1999); *Fireman's Fund Ins. Co. v. Sparks Const., Inc.*
5 114 Cal.App.4th 1135, 1151 (2004).

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7 IT IS SO ORDERED.

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9 Date: 3/23/09

10 
11 Honorable Samuel Conti
12 Judge for the United States District Court
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